IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9671 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAKWANA NANSINGH VALSINGH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9671 of 2004

MR SHITAL R PATEL for Petitioner No. 1-2

Mr. KD Pandya, AGP for Respondent No. 1-3

MR JV JAPEE for Respondent No. 4,5/1

..... for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 27/08/2004

ORAL JUDGEMENT

Rule. Shri KD Pandya, learned AGP waives service of Rule on behalf of respondents No. 1 to 3 and Shri JV Japee, learned advocate waives service of Rule on behalf of respondents No. 4 to 6. With the consent of the

parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the illegality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 15.7.2004 in Revision Application No. 18 of 1998 dismissing the same and confirming the order passed by the Collector, Sabarkantha dated 26.5.1988 with regard to Entry No. 614 of the land in question.

3. The land bearing Block No. 88 admeasuring 2 hectares, 30 acres and 67 sq.mtrs. of land situate at Village Vav, Taluka Prantij, District-Sabarkantha was in the joint ownership of Jawansingh Ranchodsang and others out of which land admeasuring 1 hectare, 34 acres and 56 sq.mtrs. of land came to be sold by Amrutben Ranchodsingh one of the co-owners of the petitioners by registered sale deed and necessary entry to that effect was made in the record of rights vide entry No. 614 dated 1.6.1993 The said entry came to be objected by the respondents No. 4 and 5 and the said entry was treated as disputed entry and the Mamlatdar, Prantij passed an order on 11.3.1984 setting aside entry No. 614 as in the meantime a civil suit came to be filed and the Mamlatdar passed an order to mutate the entry subject to the ultimate outcome of the suit pending between the parties. Being aggrieved and dissatisfied with the same the petitioners preferred appeal before the Deputy Collector, Modasa and the Deputy Collector, Modasa vide judgment and order dated 27.4.1995 allowed the appeal No. 14/94 by quashing and setting aside the order passed by the Mamlatdar and restored the entry No.614. Being aggrieved and dissatisfied with the same the respondents No. 4 and 5 preferred revision application before the Collector, Sabarkantha which was numbered as Revision Application No. 23/1995. The Collector, Sabarkantha by his order dated 26.5.1998 allowed the revision application quashing and setting aside the order passed by the Deputy Collector, Modasa dated 27.4.1995 and restored the order passed by the Mamlatdar, Prantij dated 11th March 1994. Being aggrieved and dissatisfied with the order passed by the Collector, Sabarkanta dated 26.5.1998 the petitioners preferred revision application before the Secretary (Appeals), Revenue Department, State of Gujarat which was numbered as Revision Application No. 18/1998. The Secretary (Appeals), Revenue Department by his judgment and order dated 15.7.1994 dismissed the said revision application confirming the order passed by the Collector dated 26.5.1998 in cancelling entry No. 614. Being aggrieved and dissatisfied with the same, the petitioners

have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Shital R. Patel, ld. advocate appearing on behalf of the petitioners has submitted that the Collector ought not to have quashed and set aside the order passed by the Deputy Collector as the petitioners are the purchasers of the land in question who had purchased the land by registered Sale Deed and the Collector ought not to have gone into the validity of the title in a proceeding known as RTS proceeding and ought to have passed an order that the entry in favour of the petitioners would be subject to the ultimate outcome of the civil suit pending between the parties. He has further submitted that the names of the respondents No. 3 and 4 as coowners could not have been entered into by the Collector in view of pendency of the civil suit between the parties.

5. On the other hand, Shri JV Japee, learned advocate appearing on behalf of respondents No. 3 and 4 had submitted that they are the coowners of the land in question and without their consent the lands in question have been sold by one of the coowners of the petitioners and therefore their names are required to be mutated in the record of rights and therefore it is submitted that the Collector, Sabarkanta as well as the revisional authority has rightly held that entry in favour of the petitioners was required to be set aside. Shri KD Pandya, learned AGP has also tried to support the order passed by the Collector, Sabarkanta as well as the revisional authority.

6. Heard the learned advocates appearing on behalf of the parties. The petitioners have purchased the land in question by registered sale deed. Necessary entry in favour of the petitioners was made on the basis of the said registered sale deed. Therefore, assuming that the names of respondents No. 3 and 4 are also required to be mutated in the record of rights, some entry with regard to registered sale deed which was in favour of the petitioners was required to be made. In fact, it is the settled principle of law that revenue records are maintained for fiscal purpose and they have only prima facie evidentiary value of title in view of Section 135J of the Bombay Land Revenue Code. If there is any dispute with regard to title of the property reflected in the revenue records, that will have to be adjudicated upon by the competent civil court and not by the local authorities. Any observation made by the revenue authority with respect to a title to a property reflected

in the revenue records will neither bind the parties nor will such observations influence the civil court if the dispute is carried thereto.

7. In the present case, it appears that a civil suit is already pending between the parties and in the injunction application there is an injunction granted by the Civil Court in favour of the petitioners. The question of title will also figure therein and the same will have to give its judgment on the title of the subject matter of the petition. It is obvious that the revenue authorities are bound to accept the decree of a civil court in respect to the title to a property reflected in the revenue records. In that view of the matter, the observations regarding the title to the disputed property contained in the order impugned in the petition will not influence the civil court seized of the matter. Shri JV Japee, learned advocate appearing on behalf of the respondents No. 4 to 6 had submitted that in fact there is already an entry in favour of their clients, i.e. respondents No. 4 to 6 and therefore the entry in their favour is not required to be set aside. Considering the aforesaid facts and circumstances of the case and considering the fact that the petitioners have purchased the land by registered sale deed some entry in their favour is also required to be made in the revenue records. In that view of the matter, if following directions are issued it will meet the ends of justice;

(i) Along with the entries in favour of respondents No. 4 to 6, necessary entry in favour of the petitioners on the basis of the registered sale deed is also directed to be mutated. However, it is observed that the aforesaid entries would be only for a fiscal purpose and will not confer any right, title or interest in favour of any parties and the aforesaid entries will be subject to the ultimate outcome of the civil suit pending between the parties and that necessary entry will have to be made by the revenue authorities on the basis of the ultimate outcome and the decree that may be passed by the civil court. Neither party will claim possession solely on the basis of the entries in their favour and it is ultimately for the civil court to decide the question with regard to the title and the possession.

(ii) Any observation made by the revenue authority with respect to title to a property reflected in the revenue records will neither bind the parties nor will such observations influence the civil

court.

8. With these observations and directions, the orders passed by the authorities below are modified accordingly. The petition is disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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